

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

S AND S MART INC,

Plaintiff,

v.

**UNITED STATES OF AMERICA and
UNITED STATES DEPARTMENT
OF AGRICULTURE, FOOD AND
NUTRITION SERVICE,**

Defendants.

COMPLAINT

Civ. No.: 21-CV-0589

Trial by Jury is Demanded

Plaintiff, S AND S MART INC (“PLAINTIFF”), by and through undersigned counsel, alleges upon knowledge as to itself and its own acts, and upon information and belief as to all other matters, and brings this complaint against Defendants UNITED STATES OF AMERICA (“USA”) and UNITED STATES DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICE (“USDA”), and in support thereof alleges the following:

PRELIMINARY STATEMENT

1. PLAINTIFF brings this action seeking judicial review of USDA’s revocation of PLAINTIFF’s Supplemental Nutrition Assistance Program (“SNAP”) participation eligibility as a result of an enforcement action.

JURISDICTION AND VENUE

2. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 702, 7 C.F.R. § 279.7, and 7 U.S.C. § 2023.

3. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claim occurred in the Western District of New York.

PARTIES

4. PLAINTIFF is a corporation duly organized under the laws of the State of New York.

5. USDA is a USA federal executive department which oversees the SNAP benefits program pursuant to 7 C.F.R. Subchapter C.

STATEMENT OF FACTS

6. PLAINTIFF repeats, re-alleges, and incorporates by reference, paragraphs 1 through 5 inclusive, above.

7. On or about December 16, 2020, USDA mailed a letter to PLAINTIFF, a true and correct copy of which is attached as **Exhibit A**.

8. In the letter, USDA charges PLAINTIFF with the violation of “accepting SNAP benefits in exchange for merchandise, which, in addition to eligible foods, included common ineligible non-food items.”

9. In response to this violation letter the undersigned, on behalf of PLAINTIFF, spoke with Program Specialist Nicole Parker, who was handling the investigation on behalf of the USDA Retail Operations Division.

10. Pursuant to those conversations a request for an extension of time to submit a response was granted on January 8, 2021, confirmed by the attached letter received by counsel. **Exhibit B**.

11. On January 26, 2021, the undersigned, on behalf of PLAINTIFF, sent a letter memorandum with attachments in formal response to the violations cited by the USDA. **Exhibit C**.

12. On or about February 2, 2021, the USDA issued a decision, concluding “that the violations cited in [their] charge letter occurred at [S&S Mart]”. **Exhibit D.**

13. This decision included a punishment of a six-month suspension of PLAINTIFF’s ability to accept SNAP benefits.

14. On or about February 11, 2021, the undersigned, on behalf of PLAINTIFF, mailed a letter to USDA which included a Request for Administrative Review of the February 2, 2021 decision, a true and correct copy of which is attached as **Exhibit E.**

15. In response to PLAINTIFF’s Request for Administrative Review, the USDA issued a receipt confirmation letter dated February 25, 2021, sent only by email to the undersigned as counsel of record. **Exhibit F.**

16. On or about April 6, 2021, the undersigned received a Decision from the Administrative Review Officer, Rich Proulx, by email only, indicating the decision of the Retail Operations Decision was affirmed. **Exhibit G.**

17. PLAINTIFF did not receive a copy of this decision.

18. PLAINTIFF’s ability to receive food stamps was disabled on or about April 14, 2021.

19. PLAINTIFF averaged \$7,000.00 of gross sales of SNAP-eligible products a month.

20. As a result of this decision, PLAINTIFF will lose gross sales of approximately \$42,000.00.

FIRST CLAIM FOR RELIEF

JUDICIAL REVIEW AND TRIAL DE NOVO

21. PLAINTIFF repeats, re-alleges, and incorporates by reference, paragraphs 1 through 20 inclusive, above.

22. USDA's decision to suspend PLAINTIFF's SNAP program for a six-month period was contrary to the explanations offered and weight of evidence and legal authority provided by PLAINTIFF.

23. The punishment was grossly disproportionate to the alleged violation, and, if upheld, will result in a considerable monetary loss to PLAINTIFF.

24. This monetary loss could put PLAINTIFF out of business.

25. USDA's decision is arbitrary and capricious.

26. 7 C.F.R. § 279.7 provides that "a firm aggrieved by the determination of the designated reviewer may obtain judicial review of the determination by filing a complaint against the United States in the U.S. district court for the district in which the owner resides or is engaged in business," and that the complaint must be filed within 30 days after the date of delivery or service upon the firm of the notice of the determination.

27. PLAINTIFF therefore timely requests a judicial review of the decision pursuant to 7 C.F.R. § 279.7 and 7 U.S.C. § 2023 in the form of a trial de novo of USDA's decision.

SECOND CLAIM FOR RELIEF

STAY OF ADMINISTRATIVE ACTION

28. PLAINTIFF repeats, re-alleges, and incorporates by reference, paragraphs 1 through 27 inclusive, above.

29. As explained in more detail in the motion filed in conjunction with the Complaint, PLAINTIFF requests a stay of the administrative action and preliminary injunction pursuant to 7 C.F.R. § 279.7(d) and 7 U.S.C. § 2023(a)(17).

DEMAND FOR JURY TRIAL

30. Please take notice that PLAINTIFF demands trial de novo by jury in this action.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF respectfully prays that this Court grant the following relief in PLAINTIFF's favor, and that judgment be entered against DEFENDANTS for the following:

- (1) For review of USDA's decision in a trial by novo;
- (2) For a stay of the administrative action and preliminary injunction (as explained in more detail in the motion filed in conjunction with the Complaint); and
- (3) For any and all other relief this Court may deem appropriate.

Dated: Buffalo, New York.
May 5, 2021

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Respectfully Submitted,

/s/ Phil Modrzynski

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